

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CARL BENNETT,

PLAINTIFF,

VS.

CIVIL ACTION NO.: 15-CV-14465

HON. MATTHEW F. LEITMAN

MICHIGAN DEPARTMENT OF
CORRECTIONS,

DEFENDANT.

Carla D. Aikens (P69530)
Connor Gallagher (P82104)
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PLAINTIFF'S MOTION TO AMEND COMPLAINT

NOW COMES PLAINTIFF, Carl Bennett, by and through his attorneys, CARLA D.

AIKENS P.C., pursuant Fed R. Civ. P. 15(a)(2)¹, moves for leave to amend his Complaint. As grounds therefore, Plaintiff provides as follows:

1. Plaintiff filed the Complaint in this matter on December 24, 2015, without the assistance of counsel or his Allegiance Hospital medical records.

¹ Fed. R. Civ. P. (a)(2) states:

(a) Amendments Before Trial.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

2. Plaintiff brought suit against Defendants Michigan Department of Corrections (“MDOC” or “Defendant”), Jackson Allegiance Hospital, and Doctor Mahender Macha.
3. Plaintiff brought suit related to his botched surgery and the negligence surrounding his care and treatment to go along with the surgeries that has forced him to undergo two heart surgeries within a year and still needs a heart transplant.
4. On August 24, 2016, the law offices of Carla D. Aikens P.C. entered an appearance as counsel for Plaintiff on this matter.
5. On December 2, 2016, Plaintiff filed his amended complaint, this time with the assistance of counsel.
6. Subsequently, this Court dismissed Jackson Allegiance Hospital, and Doctor Mahender Macha from this complaint as Defendants, leaving only Defendant MDOC as a Defendant.
7. On September 25, 2017, this Court entered an order adopting the Magistrate’s recommendations dismissing Defendant MDOC because Plaintiff failed to exhaust his administrative remedies by way of the prison’s three-step grievance process.
8. On November 9, 2017, Plaintiff filed a motion to reconsider the Court’s position.
9. On March 28, 2018, this Court reconsidered and set aside its September 27, 2017 order reinstating Defendant MDOC as a Defendant in the case at bar.
10. The Court held that, “Bennett has presented at least some evidence that the MDOC may have interfered with his ability to file a Step III grievance, and under these circumstances...the Court is not inclined to grant summary judgment on the failure-to-exhaust defense.”²

² Doc. Entry # 74 at 9.

11. Defendant had initially requested to take Plaintiff's deposition but it does not appear that any further action has been taken in that regard, and Defendant has not yet provided Plaintiff with all requested discovery.
12. Plaintiff wishes to amend his complaint to clarify his allegations as to Defendant MDOC, which is currently the only defendant remaining in the litigation.
13. Attached to this complaint as Exhibit A, is Plaintiff's Proposed Amended Complaint.
14. In accordance with Eastern District of Michigan's LR 7.1, there Plaintiff held a conference with opposing counsel in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought.

WHEREFORE, Plaintiff prays that this honorable Court grant his Motion to Amend Complaint as brought herein, and grant any further relief deemed just and equitable.

Dated: September 18, 2018

Respectfully Submitted,

/s/ Carla D. Aikens
Carla D Aikens (P69530)
CARLA D. AIKENS, P.C.
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PLAINTIFF'S BRIEF IN SUPPORT OF HIS MOTION TO AMEND COMPLAINT

Plaintiff relies upon Federal Rule of Civil Procedure 15(a)(2), the above Motion to Amend Complaint, all previous pleadings, and any and all other applicable Federal Rules of Civil Procedure, statutes, and case law in support of this Motion. Federal Rule of Civil Procedure 15(a)(2) provides “[i]n all other cases [besides amendments by right], a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Because of the early stages of litigation and the benefit that this amendment would have on this litigation, just requires that this Court grant Plaintiff leave to amend his complaint/

WHEREFORE the Plaintiff prays that this Honorable Court grant its Motion to Amend Complaint as brought herein, and grant any further relief deemed just and equitable.

Dated: September 18, 2018

Respectfully Submitted,

/s/ Carla D. Aikens
Carla D Aikens (P69530)
CARLA D. AIKENS, P.C.
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Certificate of Service

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses as directed on the pleadings via the Court's e-filing system on September 18, 2018, by:

/s/ Carla D. Aikens